

SYNOPSIS

Rick Sasso is a spinal surgeon and inventor who has a patent for a spinal stabilization device. He started a company, SEE LLC, to hold and manage his inventions. On behalf of SEE, he entered into a contract with a medical device manufacturer.

Under this 1998 contract, SEE would transfer the rights to a patent in exchange for several types of payment. The manufacturer promised to pay (1) up-front cash, (2) shares of the manufacturer's stock, and (3) a royalty payment on each medical device sold. The manufacturer paid the cash, gave the stock, but has never made a single royalty payment.

Although the total amount of royalties potentially due has not been calculated, it could be in the neighborhood of \$750 million. And that is what Sasso and SEE are suing to try to obtain—they claim that the manufacturer has shirked its obligations under the deal.

But the manufacturer has an excuse for why it did not make this royalty payment: It claims that SEE never transferred the patent. Of course, if one party to a contract does not perform its part of the bargain, it cannot sue the other side.

The manufacturer has a different story of what happened. It says that Sasso never transferred the patent to SEE, and so SEE could not have transferred the patent to the manufacturer. In fact, after the 1998 SEE contract, Sasso (the individual) entered into multiple contracts with the manufacturer to make various medical devices. Altogether, he has been paid over \$20 million.

The manufacturer suggests that the 1998 deal was discarded and forgotten, and that Sasso is reviving it simply to "double collect" on the deals he made subsequently.

SEE argues back that it *did* perform its portion of the contract. Federal law only requires "a writing" to transfer a patent, but does not specify any requirements for

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Court of Appeals of Indiana

Hearing oral argument at

Purdue University

Tuesday, Oct. 20, 2015 @ 12:50 p.m.



Sasso v. Warsaw Orthopedic

43A04-1504-PL-175

On Appeal from Kosciusko Circuit Court

The Honorable Curtis D. Palmer, Judge

Today's Panel of Judges



John G. Baker

was appointed to the Court in June 1989, which makes him the longest serving member of the current Court. Raised in Aurora in Dearborn County, he graduated from

Culver Military Academy in 1964, Indiana University Bloomington in 1968 and IU School of Law Bloomington in 1971. Judge Baker was appointed to the Monroe County Court in 1976 and assumed the Monroe Superior Court bench in 1977. He has served on the Board of Managers of the Indiana Judges Association since 1980 and was president from 1987-89. Judge Baker has been an adjunct professor at IU Bloomington and IU McKinney School of Law. He attained the rank of Captain in the U.S. Army Reserve and earned an L.L.M. in judicial process from the University of Virginia School of Law in 1995.



Margret G. Robb,

appointed to the Court in July 1998, served as first woman Chief Judge from 2011 through 2013. She holds a B.S., 1970, and M.S., 1972, from Purdue and a J.D., *magna cum*

laude, 1978, from the I.U. Robert H. McKinney School of Law. She practiced law in Lafayette, was a bankruptcy panel trustee, on the Indiana Board of Law Examiners, Chaired Governor Bowen's Commission on the Status of Women and the ABA law school Accreditation Committee. She chaired many Indiana Supreme Court Task Forces, serves the State, National and local Bar Associations, their Foundations, and the National Asso-

ciation of Women Judges in various capacities. Among her awards are the State Bar Association's: 1993 "Celebrating 100 Years of Women in the Law," 2005 Women in the Law Recognition, 2011 David Hammacher Appellate Practice Section; 2001 Maynard K. Hine distinguished alumni, 2004 Ball State University's Woman of Achievement, 2012 IJB Woman of Achievement and was honored with a 2012 Indiana Legislature's concurrent resolution.



Randall T. Shepard

of Evansville was appointed to the Indiana Supreme Court by Governor Robert D. Orr in 1985 at the age of 38. He became Chief Justice of Indiana in March 1987 and retired from the Court

in March 2012, at which point he was the longest-serving Chief Justice in Indiana history and the senior Chief Justice in the country's state supreme courts.

Since leaving the Supreme Court, Shepard has served as a Senior Judge on the Court of Appeals and as Executive in Residence at I.U.'s Public Policy Institute. He now chairs the ABA Task Force on the Future of Legal Education and has become a director of Old National Bancorp.

A seventh-generation Hoosier, Judge Shepard graduated from Princeton University *cum laude* and from the Yale Law School. He earned a Master of Laws degree in the judicial process from the University of Virginia. Judge Shepard has served as chair of the ABA Appellate Judges Conference and of the Section of Legal Education and Admissions to the Bar and as President of the National Conference of Chief Justices. He is a trustee emeritus of the National Trust for Historic Preservation and a former chair of Indiana Landmarks, Inc.

Synopsis, cont.

what the writing has to look like.

SEE reasons that the contract itself was written down, and is therefore "a writing," and therefore was sufficient to transfer the patent.

Both sides make a point of the time that has passed. SEE and Sasso say that if there really was a failure to transfer the patent, the manufacturer should have said something a long time ago. But the manufacturer counters that if SEE and Sasso really thought they were owed this money, then *they* should have said something a long time ago.

The trial court awarded summary judgment to the manufacturer, agreeing that no transfer took place. SEE and Sasso are challenging that ruling in front of the Court of Appeals today.

A Brief History of the Court

While the Supreme Court of Indiana dates from the State's first Constitution, of 1816, the concept of a second appellate-level court to serve the entire State originated with an enactment of the General Assembly in 1891. The Appellate Court of Indiana was created to relieve the growing caseload of the Supreme Court.

The legislators foresaw it as a judicial panel to exist for six years, to expedite an overflow of appellate cases.

In 1897, the Court was retained for an additional four years and in 1891 was re-created as the permanent Appellate Court. It evolved into an eight-member court that sat in panels of four judges.

The Appellate Court was abolished and today's Court of Appeals was created as a Constitutional Court by an amendment to the Indiana Constitution ratified on Nov. 3, 1970, and came into existence on Jan. 1, 1972.

The present Court has 15 members, appointed from five judicial districts. The judges sit in panels of three, and each panel has statewide jurisdiction.

The judges elect a chief judge, who performs administrative duties, and also elect a presiding judge for each of the five judicial districts.

Court of Appeals Mission Statement:

To Serve All People by Providing Equal Justice Under Law